

## Federal Communications Commission Washington, D.C. 20554

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MAY 3 1996

The Honorable J. Bennett Johnston United States Senate 136 Hart Senate Office Building Washington, D.C. 20510-1802 POCKET ELLE CONTORIGINAL

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FEDERAL COMMUNICATIONS COMMISSIO:

OFFICE OF SECRETARY

Dear Senator Johnston:

Thank you for the letter dated April 1, 1996, on behalf of your constituent, Randolph R. Cassidy, regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. Mr. Cassidy expresses concern regarding the Commission's decision to redesignate the 800 MHz General Category Pool frequencies. Mr. Cassidy also expresses concern about the proposed use of competitive bidding procedures to award future licenses on these frequencies.

On December 15, 1995, the Commission issued a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144, which addressed the treatment of the General Category. In the First Report and Order, the Commission determined that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees using General Category channels as any other type of Part 90 licensee. The Commission therefore concluded that the most efficient use of the General Category channels would be to redesignate them exclusively for SMR use. Thus, the First Report and Order provided that in the future, only SMR service providers will be eligible for new licenses in the General Category pool. Existing non-SMR licensees on General Category channels will continue to operate under their current authorizations, however, and will be fully protected from interference by new SMR licensees. In addition, the Commission's decision specifies that SMR service providers are no longer eligible to apply for licenses on Business or Industrial/Land Transportation channels. As a result, we anticipate that the First Report and Order will make more spectrum available for licensees such as Mr. Cassidy, who are currently eligible, and will continue to be eligible, to apply in the Business and Industrial/Land Transportation categories. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses

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satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable. As noted above, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations.

Thank you for your inquiry.

Sincerely,

David L. Furth

Chief, Commercial Wireless Division Wireless Telecommunications Bureau

Enclosure

J. BENNETT JOHNST

## United States Senate

WASHINGTON, DC 20510-1802

April 1, 1996

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Ms. Judith L. Harris Federal Communications Commission 1919 M Street, N.W., Room 808 Washington, D.C. 20554

Dear Ms. Harris:

Because of my desire to be responsive to all inquiries, I respectfully request your consideration of the enclosed material.

I will appreciate your findings and views, in duplicate form, along with the return of the enclosures by May 1, 1996.

With kindest regards, I am

Sincerely,

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## BATON ROUGE / PRAIRIEVILLE P.O. BOX 80231 / BATON ROUGE, LA. 70898-0231 BATON ROUGE (504) 348-0945 PRAIRIEVILLE (504) 873-4111

March 20, 1996

The Honorable J. Bennett Johnston United States Senate Washington, DC 20510

Re:

FCC PR Docket No 93-144
Redesignation of 800 MHz General
Category Pool to Commercial Only
Service/Proposed Implementation of
Competitive Bidding Processes

Dear Mr. Johnston:

R. R. Cassidy, Inc. would like to express it's concerns with respect to the above-referenced proceeding. The Federal Communications Commission has reallocated 150 channels in the 800 MHz band that have been shared jointly by both private and commercial licensees. The Federal Communications Commission has justified this action by claiming that the majority of the channels were used for commercial operations. We are one of more than 3,400 non-commercial licensees who would be adversely affected by this action. We do not use the spectrum to generate business revenues.

R. R. Cassidy, Inc. is a Louisiana general contractor, specializing in foundation drilling. Our company relies heavily on our 800 MHz band radio system to communicate from different jobsites. These radios are also used to maneuver personnel and equipment around large areas. These radios are not merely used as a matter of convenience, these units are required for the daily operation and safety of our crews.

The Federal Communications Commission has not only reclassified the band for commercial use, it has also granted itself authority to conduct auctions. In essence our company, as a non-commercial entity operating a radio system in a spectrum band where there is little opportunity for mutually exclusive applications, would be federally forced into competitive bidding processes.

HONORABLE J. BENNETT JOHNSTON UNITED STATES SENATE MARCH 20, 1996 PAGE 2

We feel that these FCC regulatory actions seem to exceed the FCC's auction authority as set forth in the Omnibus Budget Reconciliation Act of 1993. In granting authority to the FCC to award such authorizations by auction, we understood Congress expressly limited such authority to situations involving mutually exclusive applications. Further, section 309(j)(6)(E) of the 1993 Budget Act directed the FCC to make every effort to avoid mutually exclusive situations by use of engineering solutions, such as frequency coordination. The opportunity to generate revenues was not to be used as justification for ignoring this congressional directive.

We respectfully request that you urge the FCC to reverse its recent redesignation of the 800 MHz General Category Pool. That action alone would preclude the FCC from instituting auction processes in a band that is heavily encumbered by both private and commercial licensees. We are at a loss to understand federal government action that would expose our company to having to compete for spectrum through auctions when our assigned channels were validly licensed in accordance with existing policy.

Yours truly,

RANDOLPH R. CASSIDY

President

R. R. Cassidy, Inc.

RRC/sld

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